REMARKS

This application has been amended in a manner to place it in condition for allowance.

Status of the Claims

Claim 19 has been amended to recite "kneader" as kindly suggested in the Official Action.

Claim 23 has been amended to correct the typographical errors, i.e., " a resilience of between 67% and 87% and a cohesion of between 45% and 65%." Support for the amendment may be found, for example, at page 19, lines 18-21.

Claims 1-24 remain in this application.

Claim Rejections-35 USC §112

Claim 9 was rejected under 35 U.S.C. § 112, first paragraph, for not complying with the written description requirement.

Claim 19 has been amended to recite "kneader" as kindly suggested in the Official Action. Thus, withdrawal of the rejection is respectfully requested.

Claim 23 was rejected under 35 U.S.C. § 112, second paragraph, for being indefinite. This rejection is respectfully traversed for the reasons that follow.

Claim 23 has been amended to correct the typographical errors, i.e., "a resilience of between 67% and

87% and a cohesion of between 45% and 65%. Support for the amendment may be found, for example, at page 19, lines 18-21.

Furthermore, one skilled in the art would have understood the claimed firmness, resilience and cohesion features as these are food texture characteristics routinely used to define a food product. The "Texture profile Analysis" (or FTA), disclosed in the present application is a method to determine firmness, resilience and cohesion. It is a method that is well known and commonly used by the skilled artisan to determine food texture characteristics as shown in the review paper published in 1996 in "Journal of Texture Studies" included in the Appendix of this Amendment.

Therefore, the values of claim 23 would have been clear to the person of ordinary skill in the art of solid dairy foods, and withdrawal of the rejection is respectfully requested.

Claim Rejections-35 USC §103

Claims 1-20 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Brenton et al. EP 0 815 737 (R1) in view of Karrazi U.S. 4,719,113(R2) or Bodor et al. EP 0 535 728 (R3).

These rejections are respectfully traversed, and will be discussed together below.

In response to the arguments submitted in the previously filed Amendment, the position of the Official Action was that R1 recites "about 72°C", which could be 68°C to 74°C.

This position has no factual basis.

R1 does not recite "about 72°C" or "68°C to 74°C".

The temperatures recited by R1 are, in claim 4, "about 72.8°C to about 79.4°C" and, in claim 6, a second temperature is selected to be "about 72.8°C to about 76.7°C".

The temperatures disclosed by R1 in the specification are "about 72.8°C to about 81.1°C" in column 5, line 18 and, in the Example, "about 72.8°C to about 75.6°C".

Accordingly, there is neither a recitation nor a disclosure of a temperature of about 72°C or a range of 68°C to 74°C.

In determining the range encompassed by the term "about", one must consider the context of the term as it is used in the specification and claims of the application. *Ortho-McNeil Pharm., Inc. v. Caraco Pharm. Labs., Ltd.*, 476 F.3d 1321, 1326, 81 USPQ2d 1427, 1432 (Fed. Cir. 2007).

Thus, the context of "about" used by R1 in the specification and claims, the various ranges disclosed by R1 fail to encompass 70°C, or any part of the claimed range of "60°C to 70°C".

Moreover, the characteristics of the heated cheese of R1 teach away from the claimed "60°C to 70°C". R1 discloses that one obtains a melted cheese mass (lines 25-26 of column 5). That is, the heating of R1 leads to a melting of the natural cheese, which removes the structure of the initial texture of the natural cheese. Indeed, the present specification explains that the melting of R1 makes it impossible to achieve a fibrous texture as achieved by the claimed invention (i.e., in the paragraph spanning pages 3 and 4).

From the above, it is clear that the claimed method differs from R1 in that the heating of the cheese mass is conducted at a temperature 60°C to 70°C, and, thus, R1 is not capable of forming a cheese product having a fibrous texture.

R2 is unable remedy this deficiency of R1 for reference purposes, i.e., heating at 60°C to 70°C the drawn-curd cheese, mixture of drawn-curd cheeses or a mixture of cheeses. As acknowledged in the previous Official Action, R2 discloses a process where the base ingredients are mixed and heated to about 82°C.

R3 also fails to remedy the deficiencies of R1 for reference purposes. R3 discloses heating a blond 30-90% of a unripened cheese at a temperature sufficient to plasticize the blend and below pasteurization temperatures, i.e., generally between 35°C and 68°C, so that bacterial cultures present in

the unripened cheese are able to survive the process (R3, page 4, lines 26-29).

Moreover, the second step of the method disclosed in R1 is closely related to the method described in R3 in that the mixture of cheeses previously heated is mixed with yogurt at a temperature that allows yogurt bacteria to survive. Thus, one skilled in the art would not have had any suggestion to modify the temperature at which the mixture of cheeses is heated in the first step of the method disclosed in R1.

For this reason, starting from R1, R3 would not have prompted one skilled in the art to heat at 60°C to 70°C instead of about 72.8°C to about 82.1°C a drawn-curd cheese, mixture of drawn-curd cheeses or a mixture of cheeses comprising at least 50% by weight of one or more drawn-curd cheeses before cooling the cheese mass below destruction temperature of the flora of a fresh fermented milk product and blending it with the fresh fermented milk product.

Accordingly, neither R2 nor R3 would have cured the deficiency of R1 with respect to the range of temperatures of the heat treatment of the cheese mass, before incorporating yogurt therein.

Thus, even if one skilled in the art had taken into consideration and combined R1 with the teaching of R2 or R3, the combination would fail to teach the method of claim 1. Indeed, the combination of R1 with R2 and/or R3 would have

necessarily comprised a heating step of 72.8°C to about 82.1°C for a drawn-curd cheese, mixture of drawn-curd cheeses or a mixture of cheeses comprising at least 50% by weight of one or more drawn-curd cheeses.

However, as disclosed in the present specification, when such a heating step is conducted at a temperature greater than 70°C, the fibrous texture is destroyed and the final product is a cheese product without a fibrous texture, which is contrary to that one obtained by the claimed invention. See, e.g., page 9, third paragraph of the present specification.

Therefore, the independent claim 1, and the dependent claims 2-24 are not render obvious by R1 in view of R2 and/or R3, and withdrawal of the rejection is respectfully requested.

Claims Free Of Prior Art

Applicant acknowledges with appreciation the indication of no prior art applied to claims 21-24.

Conclusion

In view of the amendment to the claims and the foregoing remarks, this application is in condition for allowance at the time of the next Official Action. Allowance and passage to issue on that basis is respectfully requested.

Should there be any matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

The Commissioner is hereby authorized in this, concurrent, and future submissions, to charge any deficiency or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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APPENDIX:

The Appendix includes the following item:

- Instrumental Texture Profile Analysis with Particular Reference to Gelled Systems, Pons et al. Journal of Texture Studies 27 (1996) 597-624.